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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. NEAL BERNARD LINDSEY, Defendant and Appellant.	B211900 (Los Angeles County Super. Ct. No. VA105099)

APPEAL from a judgment of the Superior Court of Los Angeles County, Beverly Reid O'Connell, Judge. Affirmed.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Neal Bernard Lindsey appeals from the judgment entered following a jury trial in which he was convicted of brandishing a firearm at a person in a motor vehicle. (Pen. Code, § 417.3.) Imposition of sentence was suspended and he was placed on formal probation for three years under certain terms and conditions, including that he serve 180 days in jail.

The evidence at trial established that on February 5, 2008, at approximately 7:30 a.m., Thomas Charles Heydorff was traveling northbound on the 605 Freeway toward the 5 Freeway interchange. The traffic was heavy and he was traveling approximately 10 miles per hour. As he looked in his rearview mirror, he saw a yellow and black Dodge Charger moving through the traffic and coming his way. As Heydorff transitioned onto the northbound lanes of the 5 Freeway, the Dodge Charger came from Heydorff's right side and cut him off. Heydorff honked his horn, had to move out of the lane, and threw his hands up "in disgust. . . ." Appellant immediately slowed down and rolled down his window. The Dodge Charger was a late model with heavily tinted windows, a yellow body with black on parts of the fenders, and the word "Daytona" on the side. It appeared to have 25-inch rims and was "intimidating looking." Appellant's vehicle and Heydorff's vehicle were even with each other and Heydorff said something to the effect of "we all have to drive this freeway. It's a lane change. . . ." As appellant's window went down, appellant said something in an intimidating manner while looking straight at Heydorff. Appellant then pulled out a black pistol from between the seat and center console, raised it, and aimed it at the top of the windshield of his own vehicle. The cars were traveling less than five to ten miles per hour and appellant was approximately eight feet away from the driver. Heydorff was familiar with firearms and believed appellant's weapon was a "Glock" semiautomatic handgun. When appellant raised the weapon, Heydorff stopped his car and motioned for appellant to go ahead. Heydorff "sat in the lane and blocked traffic to give [appellant] all the room he wanted to move forward." Heydorff was frightened. Once appellant got ahead of Heydorff, Heydorff called 9-1-1 and reported what happened. Heydorff made a second 9-1-1 call approximately eight to nine minutes later to report that appellant had exited the freeway.

When Mr. Heydorff picked appellant's photograph from the lineup, he said he was 80 percent sure it was him. He also said there was one other photo that looked familiar, but "[his] gut told [him] that it was probably [the one he chose]." Heydorff stated appellant "seemed like a gangster by the car and the attitude and the way he changed lanes and cutting people off." He was pretty aggressive and the car he drove "was not your typical freeway car."

Brian Caporrimo, an investigator for the California Highway Patrol, investigated the incident and on February 14, 2008, showed Heydorff a set of six photographs. Investigator Caporrimo compiled the photographs from a database referred to as Cal-Photo, containing DMV photographs and photographs from other resources. Based on the meeting with Heydorff and information Investigator Caporrimo had regarding the incident, Investigator Caporrimo obtained the license plate number of a suspect's vehicle. The vehicle matched the description given by Heydorff and belonged to appellant. When appellant was arrested, he was carrying a loaded .40 caliber semiautomatic Glock handgun in a holster.

Following waiver of his *Miranda*[1] rights, appellant stated he normally drives the yellow Dodge Charger automobile and that no one else drives the car. He starts work at 7:30 a.m. and usually leaves his residence for work at approximately 6:45 a.m. He has his handgun on him as he drives to work each morning. He admitted that he was on the transition road from the 605 Freeway northbound to the 5 Freeway northbound on February 5, 2008. He said he did not recall an incident with another motorist on February 5. Caporrimo explained to appellant the circumstances of the investigation and the statements made by Heydorff and asked appellant for his side of the story. Appellant stated he could not think of any incident that had occurred on the road. Appellant stated that he carries the gun for work and that he worked for an armored car company.

Appellant objected to the introduction of the tape recordings of two 9-1-1 calls made by Heydorff. The court overruled the objection, stating the victim was under the

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1 *Miranda v. Arizona* (1966) 384 U.S. 436.

stress of the event and the calls fell within the hearsay exception of Evidence Code section 1240. The court observed Heydorff was also in a dangerous situation seeking emergency assistance and introduction of the recordings did not implicate confrontation clause concerns under *Crawford v. Washington* (2004) 541 U.S. 36.

Defense witnesses testified that appellant drove an armored truck, was a likeable person, and was not known to be angry or to threaten anyone. Appellant's manager testified there were constant positive calls from customers and never any complaints about appellant's behavior. Appellant testified that he did not recall any confrontations or incidents with other vehicles on the morning of February 5.

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On April 23, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On May 12, 2009, he filed a letter brief arguing that the victim was only 60 percent to 70 percent sure of the identification, that the victim stated appellant looked like a "gang banger," and that appellant's car looked like an aggressive car. Appellant claims this defamation of character is unfair. Further, appellant observes there were no witnesses to the alleged incident.

Appellant asserted his photograph unfairly stood out from the others in the photo lineup. Appellant claimed he was falsely accused of the crime and unfairly convicted. He asserted he did not have a jury of his peers, and that his conviction has created a hardship for his family. He asserts his appellate counsel did not take his situation seriously and requests that new appellate counsel be appointed.

"The standard of review is well settled: On appeal, we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] '"[I]f the verdict is supported by substantial evidence, we

must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder."' [Citation.] 'The standard of review is the same in cases in which the People rely mainly on circumstantial evidence. [Citation.] "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt."' [Citation.]" (*People v. Snow* (2003) 30 Cal.4th 43, 66.)

"[T]he direct testimony of a single witness is sufficient to support a finding unless the testimony is physically impossible or its falsity is apparent 'without resorting to inferences or deductions.' [Citations.] Except in these rare instances of demonstrable falsity, doubts about the credibility of the in-court witness should be left for the jury's resolution . . . ." (*People v. Cudjo* (1993) 6 Cal.4th 585, 608-609.)

Further, there is nothing in the appellate record indicating the photographic lineup was unfairly suggestive or that there was any unfairness in the selection of a jury. Additionally, there is no indication that appellate counsel has not taken appellant's situation seriously.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.